



# bulletin



JULY 2015

Excellence in North Dakota public education through local school board governance ■ VOL XL ISSUE 7

## Modernization of ESEA Likely to Happen This Year

Congressman Kevin Cramer joined a majority of the members of the United States House of Representatives to pass the *Student Success Act* (H.R. 5). This legislation replaces the existing No Child Left Behind law and significantly updates and reauthorizes the Elementary and Secondary Education Act (ESEA). This bill is very similar to the version passed by the House in 2013.



Summary of the bill:

- Replaces the current national accountability scheme based on high stakes tests with state-led accountability systems, returning responsibility for measuring student and school performance to states and school districts.
- Eliminates more than 65 ineffective, duplicative, and unnecessary programs and replaces this maze of programs

with a Local Academic Flexible Grant, helping schools better support students.

- Protects state and local autonomy over decisions in the classroom by the Secretary of Education and reins in the secretary's regulator authority.
- Strengthens existing efforts to improve student performance among targeted student populations, including English learners and homeless children.
- Empowers parents with more school choice options by continuing support for magnet schools and expanding charter school opportunities, as well as allowing Title I funds to follow low-income children to the public school of the parent's choice.
- Does not allow government control of private and religious schools. There is a provision in the bill that ensures private schools and home schools remain free from government control.



Heidi Heitkamp voted with the majority. The Klobuchar-Hoeven amendment, which allows funds under "Improving STEM Instruction and Student



Achievement," is included in the bill. This will enhance STEM programs within a school. Fortunately, an amendment offered on school choice failed. The amendment sought to allow Title I dollars to follow eligible students who would choose to attend any public or private school within their respective district. It would have also required the U.S. Department

The United States Senate's version of ESEA, called the *Every Child Achieves Act*, passed the Senate on a strong vote of 81 to 17 on July 16. Senators John Hoeven and

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## NDSBA Service Award Program

NDSBA recognizes board members for their professional development, service, and participation. Awards are made in two categories based on a point system: **Veteran Board Members** (100 points) and **Master Board Members** (200 points). Members who have participated in National School Boards Association events receive their award "with distinction." Awards are presented at NDSBA's Annual Convention.

Business managers should maintain scoring forms for board members and update them each year. Business managers should send a copy to NDSBA when 100 and

200 points have been earned. Forms are available at [www.ndsba.org](http://www.ndsba.org) under the "Services" link. Also available on the webpage is a spreadsheet that may be useful to record board members' yearly activities. Some service activity or participation areas may not be listed on the form.

If you have a board member who participates in something that is not listed or you have other questions about point categories, please call the NDSBA office.

A copy of the qualifying board member's form must be received by NDSBA no later than **Friday, September 11.**



# from the director's chair

■ by Jon Martinson, NDSBA Executive Director

## Consider Hiring an Outside Negotiator

Thanks to those school board members who took time to share their reaction to my column on negotiations in the June *Bulletin*. There was agreement among those who called indicating that the teachers' union does, indeed, count on sitting across the negotiations table from inexperienced school board members. One board member said negotiations have become "very difficult" the past few years and that teacher negotiators "bank on our inexperience."

Perhaps it would be wise for school board members to get completely out of the practice of negotiating with members of the union. In addition to board inexperience, there are a number of reasons for this suggestion. The most significant reason results from various

conflict of interest issues. Consider this: In some districts, a board negotiator is married to a teacher; and in another district, the chief board negotiator's full-time position is teaching in a nearby school district. These examples are unfortunate

because the board negotiator has primary loyalty to teachers rather than to fellow school board members and the administration.

Beyond those examples, let's look at negotiations in the broader context. Most people want to be liked and school board members, business managers, and superintendents are no exception. In the majority of school districts in North Dakota, people know each other and they visit at the gas station, grocery store, and sporting events. It is simply unrealistic to think many board members and administrators are willing and able to take a tough stance over negotiations knowing their decision will impact their neighbor or a member of their church.

Kudos to those boards willing to stick to their convictions, acknowledge that negotiations are no longer productive, declare impasse if necessary, and then ask for assistance from the North Dakota Education Fact Finding Commission. Yet even this reasonable approach to resolving disagreement can result in repercussions for board members.

There are other options to board members sitting across from teachers at the negotiations table. For example, some boards hire an outside person, such as an attorney, to negotiate for them. We think this is a good idea. First, it creates a buffer between school boards and teachers. Although the school board is ultimately responsible for approving an agreement, an outside negotiator removes board members from the often contentious, emotional, and on-going negotiations process. Second, attorneys have experience. After all, they live in world of confrontation. On a daily basis, they communicate with attorneys representing "the other side" and those who practice trial law have the

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## Annette Bendish Leaving NDSBA

It is with mixed feelings that we say farewell to Annette Bendish, NDSBA Legal Counsel since 2012. The association is sad to see Annette leave and yet happy to see her family move on to another exciting chapter in their lives. Her family is moving to the St. Paul, Minnesota, area where her husband has accepted a new position.



Annette served as NDSBA's first full-time legal counsel and has been vital to the success of the association. With her friendly personality and legal expertise, she has assisted school board members and superintendents with numerous day-to-day questions and issues. In addition, Annette served as a legislative lobbyist during the 2013 and 2015 sessions and worked to pass five bills she drafted for NDSBA in 2015. She organized and presented at the annual School Law Seminar and wrote the bylaws for our new Legal Services Affiliation Program.

Annette's contributions have been a great benefit to NDSBA and she will be deeply missed. We wish Annette and her family the very best and the greatest of success in future endeavors. Her last day in the office is August 14, 2015.

## Convention Reminders

Resolutions must be received in the NDSBA office no later than 4:00 on **Monday, August 10**.

If you are interested in service as a convention committee member please contact NDSBA by **Monday, August 3**.



October 29-30, 2015  
Ramkota Hotel, Bismarck

## bulletin

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# comments of counsel

by Annette Bendish, NDSBA Legal Counsel

## Impact of Obergefell v. Hodges

On June 26, 2015, the U.S. Supreme Court issued a landmark decision in *Obergefell v. Hodges*. In a 5-4 decision, the Court held that marriage is a fundamental liberty interest under the Fourteenth Amendment and it must be available to same-sex couples on equal terms to those of opposite-sex couples. The opinion specifically invalidated laws providing otherwise, and further held that there is no lawful basis for a state to refuse to recognize a lawful marriage performed in another state on the basis of its same-sex character. The majority ruled marriage to be a fundamental right protected by the Constitution because it: (1) is inherent in the concept of personal autonomy; (2) supports a two-person union unlike any other in its importance to committed individuals; (3) safeguards children and families; and (4) is a keystone of our social order.

This means that under the law there is no longer a distinction between “marriage” and “same-sex marriage.” Employers in North Dakota, including school districts, should review policies, procedures, and benefit plans to ensure compliance with the *Obergefell* opinion.

Each of the four dissenting justices authored their own separate opinions. The central theme of the dissenting justices attacked the judicial process itself rather than the merits of same-

sex marriage. In the leading dissent, Chief Justice Roberts disagreed with the majority’s “judicial policymaking.” Chief Justice Roberts opined, “...this Court is not a legislature. Whether same-sex marriage is a good idea should be of no concern to us. Under the Constitution, judges have power to say what the law is, not what it should be.”

Full text of the opinion is available online at: [http://www.supremecourt.gov/opinions/14pdf/14-556\\_3204.pdf](http://www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf).

### FMLA leave

School districts should review Family and Medical Leave Act (FMLA) policies. Earlier this year, the Department of Labor changed the FMLA’s definition of spouse to include same-sex partners in marriages that were lawfully recognized in the place where they were performed, regardless of where the employee resided. The *Obergefell* opinion’s applies to all states. Therefore, employees in same-sex marriages should not be denied FMLA leave for a spouse. Employees may also qualify for other types of familial leave.

### Benefit plans

The *Obergefell* decision also impacts employer-sponsored health and other benefit plans that do not currently extend coverage to same-sex spouses. School districts should review their benefit plans to determine if they are treating all married couples equally. If plan documents define “spouse” as an opposite-sex partner these definitions may require modification.

## Jimmy Tingle Keynote Speaker on Thursday, October 29



Comedian, writer, actor, and satirist, Jimmy Tingle will kick off the annual convention on Thursday afternoon. The Cambridge-born Harvard graduate has appeared on *The Tonight Show*, CNN, *Larry King’s Weekend*, and *Late Night with Conan O’Brian*. Tingle has won *Boston Magazine’s* “Best of Boston” on two occasions. Scheduled after Thursday’s Law Seminar and New Member Seminar, Tingle will have you relaxed and laughing at 3:00 p.m.

### Many New Breakout Sessions:

Eleven members of State Superintendent Baesler’s **Student Cabinet** will provide feedback on how to improve the educational system. Cabinet members include 11 females and nine males from five elementary schools, four middle schools, and eight high schools in 13 North Dakota cities.

**Scott Wild** will help attendees become more comfortable with technology that seems designed for the younger generation. Social media can significantly help you manage your time, information, and communications in your role as a school board member.

**Jon Arntson**, a nationally recognized attorney with Arntson & Stewart in Fargo, has extensive experience working with school district bonding issues. Advising school districts requires an understanding of state statutes, open meeting and records law, and federal law regulating school districts such as the Family Education Rights and Privacy Act.

## NDSBA In-house Legal Counsel Job Opening

The North Dakota School Boards Association seeks an experienced attorney to provide legal services and direction to school boards. This full-time position involves responding to phone calls and emails from board members on a daily basis, reviewing policies, presenting sessions on legal topics at seminars, legislative lobbying, and serving as editor of a monthly newsletter. Starting salary range is \$75,000-\$85,000 based on experience and includes a full benefit package. License to practice law in North Dakota is required; experience with school law or public employment law preferred. Apply by August 14, 2015. Background checks will be conducted on applicants selected for an interview. Application materials/job description available at [www.ndsba.org](http://www.ndsba.org) or call 701-255-4127.

**RETURN SERVICE REQUESTED**

## ■ Modernization of ESEA

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of Education to assess graduation rates for Title I students who decide to enroll in private schools.

The legislation will now head to conference committee with House leaders to reconcile differences with H.R. 5, the *Student Success Act*, and work to achieve a consensus.

NDSBA thanks our North Dakota Congressional Delegation!



Most changes made by the 2015 Legislative Assembly become effective August

1, 2015. A complete list of effective dates is available at:

<http://www.legis.nd.gov/files/resource/64-2015/effective-dates-legislation/2015-effective-dates-legislation.pdf?20150708132925>

Interim committees and interim studies have been decided.

Information about the committees, studies, and meeting dates is available at <http://www.legis.nd.gov/assembly/64-2015/session-interim>.

## ■ Director's Chair

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experience, knowledge, and expertise to think quickly on their feet, to deal with facts, and to understand their adversary's position. Furthermore, they don't get rattled and are accustomed to give and take. One member of a school board that hired an attorney to negotiate for them this year said, "the teachers strategy was to have inexperienced board members at the table again, and when they saw that wasn't going to happen this year, they didn't know what to do." Exactly right.

NDSBA is considering the development of a cadre of attorneys interested in providing negotiating services to school districts. We would reach out first to attorneys around the state who are members of our Legal Services Affiliation Program. This approach would alleviate the conflict of interest issue and also level the playing field whereby experienced attorneys would meet experienced teachers who are coached and mentored by professional UniServ Directors from North Dakota United.



superintendent  
vacancies

### Beulah School District

Contact: Carrie Miller, BsMgr  
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204 5th St NW  
Beulah, ND 58523  
[carrie.miller@k12.nd.us](mailto:carrie.miller@k12.nd.us)  
Deadline: Open until filled



mark  
your calendar

### 2015 NDSBA Annual Convention

October 29-30, 2015  
Ramkota Hotel, Bismarck

### 2016 NDSBA Negotiations Seminar

February 11-12, 2016  
Ramkota Hotel, Bismarck

### 2016 NSBA Annual Conference

April 9-11, 2016  
Boston, MA

### 2016 NDSBA Annual Convention

October 27-28, 2016  
Ramkota Hotel, Bismarck